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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: HERMANN SCHWELLING - 4 PCT
PCT NO.: PCT/EP2004/012841 FILED: 11/12/04
Ser. No.: 10/579,272 FILED: 5/12/06
FOR: DEVICE FOR COMMUNTING EMPTY CONTAINERS

SUBMISSION OF INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

MAIL STOP PCT

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed please find a copy of the International Preliminary
Report on Patentability.

Respectfully submitted,
Hermann Schwelling

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP PCT, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450, on September 27, 2006.

Kelly Espitia

KOPIE

PATENT COOPERATION TREATY

PCT/EP2004/012841

PCT

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY
(CHAPTER I OR CHAPTER II
OF THE PATENT COOPERATION TREATY)
(PCT Rules 44bis.3(c) and 72.2)



From the INTERNATIONAL BUREAU

To:

FÜRST, Siegfried
Hansmann & Vogeser
Nördliche Ringstrasse 10
73033 Göppingen
ALLEMAGNE

HANSMANN & VOGESER
Patentanwälte/Göppingen

13. SEP. 2006

Termin not.

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Date of mailing (day/month/year) 08 September 2006 (08.09.2006)	
Applicant's or agent's file reference 3-411 PCT(P) Sw	IMPORTANT NOTIFICATION
International application No. PCT/EP2004/012841	International filing date (day/month/year) 12 November 2004 (12.11.2004)
Applicant SCHWELLING, Hermann	

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).



The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

2. Transmittal of the copy of the translation to the designated or elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

None

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DK, DM, DZ, EA, EC, EE, EG, EP, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 338 82 70	Authorized officer Agnes Wittmann-Regis Facsimile No. +41 22 338 82 70
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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 3-411 PCT(P) Sw	FOR FURTHER ACTION		See item 4 below
International application No. PCT/EP2004/012841	International filing date (<i>day/month/year</i>) 12 November 2004 (12.11.2004)	Priority date (<i>day/month/year</i>) 13 November 2003 (13.11.2003)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant SCHWELLING, Hermann			

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis*.1(a).

2. This REPORT consists of a total of 8 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 338 82 70	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Date of issuance of this report 29 August 2006 (29.08.2006)</td> </tr> <tr> <td style="padding: 2px;">Authorized officer Agnes Wittmann-Regis e-mail: pt06@wipo.int</td> </tr> </table>	Date of issuance of this report 29 August 2006 (29.08.2006)	Authorized officer Agnes Wittmann-Regis e-mail: pt06@wipo.int
Date of issuance of this report 29 August 2006 (29.08.2006)			
Authorized officer Agnes Wittmann-Regis e-mail: pt06@wipo.int			

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing **See form PCT/ISA/210**
(day/month/year)

Applicant's or agent's file reference 3-411 PCT(P) Sw		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/EP2004/012841	International filing date (day/month/year) 12.11.2004	Priority date (day/month/year) 13.11.2003
International Patent Classification (IPC) or both national classification and IPC B02C19/14, B02C18/18		
Applicant SCHWELLING, Hermann		

1. This opinion contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|--|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the opinion |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/012841

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language
_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	5, 6, 8-14, 16-22	YES
	Claims	1-4, 7, 15	NO
Inventive step (IS)	Claims		YES
	Claims	1-22	NO
Industrial applicability (IA)	Claims	1-22	YES
	Claims		NO
2. Citations and explanations:			
Reference is made to the following documents:			
D1: DE 201 11 752 U1 (LOETEC ELEKTRONISCHE FERTIGUNGSSYSTEME GMBH) 6 December 2001 (2001 -1 2-06)			
D2: DE 38 06 119 A1 (SCHWELLING, HERMANN, 7777 SALEM, DE; H.S.M. PRESSEN GMBH, 88682 SALEM,) 13 October 1988 (1988-10-13)			
1. The application fails to comply with the requirements of PCT Article 6 because the subject matter of claims 1, 2, 7, 10, 14, 20, 21 is not clear.			
1.1 Claim 1 defines a device which, amongst other things, comprises a cutting unit, namely of the sort comprising two cutting rollers. Furthermore, the cutting unit is characterised by the expression "document shredder cutting mechanism". This expression can merely be interpreted as meaning that the cutting unit is suitable for shredding/cutting documents. This interpretation of the cutting unit was applied in the assessment of the novelty of claim 1.			
Any other interpretation of the cutting unit that			

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

might have been intended by the applicant cannot be admitted because only one function can be construed from the expression "document shredder cutting mechanism", i.e. shredding/cutting documents. However, no technical features can be construed from that function which, nevertheless, is required for the admissibility of a functional feature in a patent claim in the "product" category (see PCT Guidelines, Chapter 5, 5.23 and 5.25). For that reason, no difference can be determined between the subject matter of claim 1, defined by the expression "document shredder cutting mechanism", and the cutting unit in D1. On the grounds of the objection raised above, the subject matter of claim 1 is considered unclear and not precisely defined (PCT Article 6).

1.2 The subject matter of claim 2 is defined by the following feature: Particle cut cutting unit [German: "Partikelschnittschneidwerk"]. It remains unclear which additional features of the device are thereby defined. Thus, the difference between the subject matter of claim 2 and the cutting unit of D1 cannot be determined. The subject matter of claim 2 is unclear and not precisely defined (PCT Article 6).

1.3 Claims 10, 13, 14, 20, 21 contain the expressions "preferred, preferably". Pursuant to PCT Guidelines, Chapter 5, 5.40, such expressions do not restrict the scope of protection of the subject matter of the claim. Such expressions may cause a lack of clarity if the subject matter of the claim is defined by them or if, due to those expressions, it is difficult to

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

determine the subject matter, as is the case here.

Therefore, such expressions should be avoided when defining the subject matter of a claim. Claims 10, 14, 20, 21, in particular, appear to be unfounded because their only technical features are based on those expressions and, as such, do not restrict the scope of protection of the subject matter of the claims. Hence, the subject matter of claims 10, 13, 14, 20, 21 is unclear and not precisely defined (PCT Article 6).

1.4 Claim 7 defines surface sections making contact with the containers supplied. This point of contact depends, for example, on the size of a container, in other words it is not clearly defined. Thus, such a definition must be considered unclear and not precisely defined (PCT Article 6).

2. The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claims 1-4, 7, 15 is not novel within the meaning of PCT Article 33(2).

2.1 From the expression "document shredder cutting mechanism" in claim 1 it can only be construed that the cutting unit is suitable for shredding/cutting documents. This functional feature is taken into consideration in the assessment of novelty.

2.2 Document D1 discloses (see figures 1 and 2): Device for crushing empty containers, particularly beverage bottles or cans made of plastic, particularly of PET or tin sheet, comprising a housing (as in figure 1)

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Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

provided with a filling opening (2) and a discharge opening (as in figure 1 and lines 2-4 on page 6), and comprising a cutting unit (3, 4) mounted inside the housing and a means for driving (1) and controlling (line 23 on page 3) the cutting unit, the said cutting unit containing at least two cutting rollers (3, 4), which are mounted at a distance from one another with regard to their axes of rotation, and the cutting mechanism containing the cutting rollers being a document shredder cutting mechanism (*).

* Based on the fact that this device cuts (lines 24-27 on page 5) hollow bodies made of metal or plastic or that are similar to tetrapacks, it is possible to argue that the said device is also suitable for cutting/shredding documents.

Hence, the subject matter of claim 1 is not novel (PCT Article 33(2)).

Dependent claims 2-22 do not appear to contain any features that, in combination with the features of any of the claims to which they refer, meet the PCT requirements with regard to novelty and inventive step.

3.1 The additional features in claims 2-4, 7, 15 are disclosed in D1. See lines 24-27 on page 5, and reference numbers 12, 14 in figure 1, and line 6 on page 4, as well as line 31 on page 5.

3.2 The subject matter of claims 18-21 appears to lack inventive step as it appears obvious that the features

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

of claims 18-21 would be used in respect of the
teaching of D2.

4. The subject matter of claims 1-22 meets the
requirements with regard to industrial applicability.